

AMENDED IN SENATE MAY 23, 2014
AMENDED IN ASSEMBLY JANUARY 14, 2014
AMENDED IN ASSEMBLY JANUARY 6, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 713

Introduced by Assembly Member Wagner

February 21, 2013

An act to amend Section 25004 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 713, as amended, Wagner. Broker-dealers.

Existing law, the Corporate Securities Law of 1968, defines a broker-dealer as, among other things, any person engaged in the business of effecting securities transactions in California for the account of others or his or her own account, and it specifies those persons or entities excluded from the definition.

Pursuant to the Governor's Reorganization Plan No. 2 of 2012 (GRP 2), the regulation of corporations is transferred, effective July 1, 2013, from the Commissioner of Corporations to the Commissioner of Business Oversight.

This bill would add to the persons excluded from the definition of a broker-dealer an individual who is a finder, as defined, who satisfied specified requirements, including, among other things, filing an initial statement of information with the Department of Business Oversight and paying a filing fee. The bill also would make technical changes to conform with the GRP 2.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25004 of the Corporations Code is
2 amended to read:
3 25004. (a) “Broker-dealer” means any person engaged in the
4 business of effecting transactions in securities in this state for the
5 account of others or for his or her own account. “Broker-dealer”
6 also includes a person engaged in the regular business of issuing
7 or guaranteeing options with regard to securities not of his or her
8 own issue. “Broker-dealer” does not include any of the following:
9 (1) Any other issuer.
10 (2) An agent, when an employee of a broker-dealer or issuer.
11 (3) A bank, trust company, or savings and loan association.
12 (4) Any person insofar as he or she buys or sells securities for
13 his or her own account, either individually or in some fiduciary
14 capacity, but not as part of a regular business.
15 (5) A person who has no place of business in this state if he or
16 she effects transactions in this state exclusively with (A) the issuers
17 of the securities involved in the transactions or (B) other
18 broker-dealers.
19 (6) A broker licensed by the Real Estate Commissioner of this
20 state when engaged in transactions in securities exempted by
21 subdivision (f) or (p) of Section 25100 or in securities the issuance
22 of which is subject to authorization by the Real Estate
23 Commissioner of this state or in transactions exempted by
24 subdivision (e) of Section 25102.
25 (7) An exchange certified by the Commissioner of Business
26 Oversight pursuant to this section when it is issuing or guaranteeing
27 options. The commissioner may by order certify an exchange under
28 this section upon any conditions as he or she by rule or order deems
29 appropriate, and upon notice and opportunity to be heard he or she
30 may suspend or revoke that certification, if he or she finds the
31 certification, suspension, or revocation to be in the public interest
32 and necessary and appropriate for the protection of investors.
33 ~~(8) (A) An individual who acts only as a finder in this state and~~
34 ~~who satisfies all of the conditions set forth in subparagraphs (B)~~
35 ~~to (G), inclusive. For purposes of this section, a “finder” is an~~

1 individual who introduces or refers one or more accredited
2 investors, as that term is defined in Rule 501(a) of Regulation D
3 under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an
4 issuer or an issuer to one or more accredited investors, solely for
5 the purpose of a potential sale of securities of the issuer, and who
6 does not (i) participate in negotiating any of the terms of the
7 securities transaction; (ii) advise any party to the securities
8 transaction regarding the merits of, or the advantages or
9 disadvantages of entering into the securities transaction; or (iii)
10 sell or intend to sell any securities of the issuer, which securities
11 are owned, directly or indirectly, by the finder as part of the
12 securities transaction. An individual who fails to comply with the
13 requirements of this paragraph shall not be entitled to rely on the
14 exemption afforded hereunder.

15 (B) The finder shall file with the Department of Business
16 Oversight prior to engaging in any activities described in
17 subparagraph (A), on a form prescribed by the commissioner, an
18 initial statement of information that shall include both of the
19 following: (i) the name and complete business or residential address
20 of the finder and (ii) the mailing address of the finder, if different
21 from the business or residential address. A filing fee of not more
22 than twenty-five dollars (\$25) may be required to be submitted,
23 as determined by the commissioner by rule, to the Department of
24 Business Oversight along with the initial statement of information
25 required by this subparagraph.

26 (C) For each securities transaction or series of securities
27 transactions, the finder shall file with the Department of Business
28 Oversight, on a form prescribed by the commissioner, a notice that
29 shall include the following affirmative representations by the
30 finder, that the finder (i) is acting only to introduce the issuer and
31 the potential accredited investor of an issuer's securities and will
32 not effect any securities transaction in, advise or consult on, or
33 induce or attempt to induce the purchase or sale of, any securities
34 in this state; (ii) has not done any of the acts, satisfied any of the
35 circumstances, or is subject to any order specified in Section 25212;
36 (iii) will not receive, directly or indirectly, possession or custody
37 of any funds related to the purchase and sale of the subject
38 securities transactions; (iv) has not acted in violation of any
39 provision of this section; and (v) has fully disclosed and obtained
40 the informed written consent of the issuer and each potential

1 accredited investor introduced by the finder to the issuer regarding
2 the material terms of the compensation arrangement between the
3 issuer and the finder relating to the finder's services provided for
4 the subject securities transaction. A separate notice shall be filed
5 for each new securities transaction or series of securities
6 transactions, no later than 20 business days following the first sale
7 of securities in the offering. The commissioner may by rule require
8 the finder to pay a filing fee in connection with the notice required
9 in this subparagraph of not more than twenty-five dollars (\$25).

10 (E) Concurrently with each introduction or referral, the finder
11 shall obtain the informed, written consent of each potential
12 accredited investor introduced or referred by the finder to an issuer
13 for the purchase and sale of securities of the issuer, in an agreement
14 signed by the finder, the issuer, and the potential accredited
15 investor, disclosing the following: (i) the type and amount of
16 compensation that will be paid to the finder in connection with the
17 subject securities transactions and the conditions for payment of
18 that compensation; (ii) that the finder shall neither recommend nor
19 advise the potential accredited investor with respect to the subject
20 securities transaction; (iii) whether the finder is also an owner of
21 the securities of the issuer, and (iv) any other actual and potential
22 conflict of interest in connection with the finder's activities related
23 to the subject securities transaction. Each potential accredited
24 investor shall represent in the written consent that the potential
25 accredited investor is an accredited investor, as that term is defined
26 in Rule 501(a) of Regulation D under the Securities Exchange Act
27 of 1933 (17 C.F.R. 230.501(a)), and that the potential accredited
28 investor knowingly consents to the payment of the compensation
29 described therein.

30 (F) The finder shall maintain and preserve, for a period of five
31 years from the date of filing of the notice prescribed in
32 subparagraph (D), a copy of the notice, the written consent required
33 in subparagraph (E), and all other records relating to any securities
34 transaction in connection with which the finder receives
35 compensation, as the commissioner may by rule require. The finder,
36 upon written request of the commissioner, shall furnish to the
37 commissioner any records required to be maintained and preserved
38 under this subparagraph.

39 (G) The finder shall not engage in any of the following: (i)
40 directly or indirectly take possession or custody of funds related

~~to the purchase and sale of any subject securities transaction; (ii) knowingly participate in any unregistered offering not otherwise exempt from registration or qualification; (iii) fail to make the disclosures required by subparagraph (E); (iv) conduct due diligence on behalf of the issuer or the potential accredited investor related to any subject securities transaction; (v) make any disclosures to potential accredited investors other than disclosures expressly permitted or required under this subparagraph. Permitted disclosures are limited to the name, address, and telephone number of the issuer; the name, type, and price (if known) of any securities to be issued; the issuer's industry, location, and years in business; the type, number, and aggregate amount of securities being offered; and contact information regarding the potential accredited investor.~~

(8) (A) Any finder who satisfies all of the conditions set forth in subparagraphs (B) to (E), inclusive. For purposes of this section, a "finder" is a natural person who, for direct or indirect compensation, introduces or refers one or more accredited investors, as that term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an issuer or an issuer to one or more accredited investors, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in this state, and who does not do any of the following:

(i) Participate in negotiating any of the terms of the offer or sale of the securities.

(ii) Advise any party to the transaction regarding the value of the securities or the advisability of investing in, purchasing, or selling the securities.

(iii) Conduct any due diligence on the part of any party to the transaction.

(iv) Sell or offer for sale in connection with the issuer transaction any securities of the issuer that are owned, directly or indirectly, by the finder.

(v) Receive, directly or indirectly, possession or custody of any funds in connection with the issuer transaction.

(vi) Knowingly receive compensation in connection with any offer or sale of securities unless the sale is qualified under this division or unless the security or the transaction is exempt or not otherwise subject to qualification.

(vii) *Make any disclosure to a potential purchaser other than the following:*

(I) *The name, address, and contact information of the issuer.*

(II) *The name, type, price, and aggregate amount of any securities being offered in the issuer transaction.*

(III) *The issuer's industry, location, and years in business.*

(B) (i) *The finder shall file with the Department of Business Oversight before engaging in any activities described in subparagraph (A), on a form prescribed by the commissioner, an initial statement of information that shall include both of the following:*

(I) *The name and complete business or residential address of the finder.*

(II) *The mailing address of the finder, if different from the business or residential address.*

(ii) *A filing fee of not more than twenty-five dollars (\$25) may be required to be submitted, as determined by the commissioner by rule, to the Department of Business Oversight along with the initial statement of information required by this subparagraph.*

(C) (i) *For each issuer transaction, the finder shall file with the Department of Business Oversight, on a form prescribed by the commissioner, a notice that shall include the following affirmative representations by the finder:*

(I) *The finder has complied and will continue to comply with the provisions of subparagraph (A).*

(II) *The finder has not performed any acts or satisfied any circumstances prohibited by Section 25212, nor been sanctioned by the commissioner pursuant to Section 25212.*

(III) *The finder has obtained the written agreement described in subparagraph (D).*

(ii) *A separate notice shall be filed for each new issuer transaction, no later than 20 business days following the first sale of securities. The commissioner may by rule require the finder to pay a filing fee in connection with the notice required in this subparagraph of up to twenty-five dollars (\$25).*

(D) (i) *Concurrently with each introduction, the finder shall obtain the informed, written consent of each person introduced or referred by the finder to an issuer, in a written agreement signed by the finder, the issuer, and the person introduced or referred, disclosing the following:*

1 (I) *The type and amount of compensation that has been or will*
2 *be paid to the finder in connection with the introduction or referral*
3 *and the conditions for payment of that compensation.*

4 (II) *That the finder is not providing advice to the issuer or any*
5 *person introduced or referred by the finder to an issuer as to the*
6 *value of the securities or as to the advisability of investing in,*
7 *purchasing, or selling the securities.*

8 (III) *Whether the finder is also an owner, directly or indirectly,*
9 *of the securities being offered or sold.*

10 (IV) *Any actual and potential conflict of interest in connection*
11 *with the finder's activities related to the issuer transaction.*

12 (V) *That the parties to the agreement shall have the right to*
13 *pursue any available remedies at law or otherwise for any breach*
14 *of the agreement.*

15 (ii) *To satisfy the requirements of this subparagraph, the*
16 *agreement shall also include a representation by the person*
17 *introduced or referred by the finder to the issuer that the person*
18 *is an accredited investor, as that term is defined in Rule 501(a) of*
19 *Regulation D under the Securities Exchange Act of 1933 (17 C.F.R.*
20 *230.501(a)), and that the person knowingly consents to the payment*
21 *of the compensation described therein.*

22 (E) *The finder shall maintain and preserve, for a period of five*
23 *years from the date of filing of the notice prescribed in*
24 *subparagraph (C), a copy of the notice, the written agreement*
25 *required in subparagraph (D), and all other records relating to*
26 *any offer or sale of securities in connection with which the finder*
27 *receives compensation, as the commissioner may by rule require.*
28 *The finder, upon written request of the commissioner, shall furnish*
29 *to the commissioner any records required to be maintained and*
30 *preserved under this subparagraph.*

31 (F) (i) *A natural person who does not meet the definition of*
32 *“finder” set forth in subparagraph (A) and does not satisfy all the*
33 *conditions set forth in subparagraphs (B) to (E), inclusive, may*
34 *be determined to be a broker-dealer by the commissioner.*

35 (ii) *In the event a natural person does not meet the definition*
36 *of “finder” set forth in subparagraph (A) and does not satisfy all*
37 *the conditions set forth in subparagraphs (B) to (E), inclusive, any*
38 *person introduced or referred by that natural person to an issuer,*
39 *who purchases securities of that issuer in an issuer transaction*
40 *following that introduction or referral, shall have the right to*

1 *pursue any applicable remedy afforded under state law, including,*
2 *without limitation, any applicable remedies pursuant to Section*
3 *25501.5.*

4 (b) For purposes of this section, an agent is an employee of a
5 broker-dealer under paragraph (2) of subdivision (a) when the
6 agent is employed by or associated with the broker-dealer under
7 all of the following conditions:

8 (1) The agent is subject to the supervision and control of the
9 broker-dealer.

10 (2) The agent performs under the name, authority, and marketing
11 policies of the broker-dealer.

12 (3) The agent discloses to investors the identity of the
13 broker-dealer.

14 (4) The agent is reported pursuant to subdivision (c) of Section
15 25210 and the rules adopted thereunder.